* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ EFA (OS)15/2003 & RA 440/2006

Date of Decision: 23rd November, 2007.

M/s OMEGA AG-SEEDS (PUNJAB) LTD.& ANR. .... Petitioners
Through Mr. Nitin Parekh, Mr. B.S. Shukla, advs.

versus

MAUVE & CRIMSON ADVERTISING PVT. LTD. & ANR.
..... Respondents
Through Mr. Pradeep Ranjan Tiwari, adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE KAILASH GAMBHIR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Per Thakur,J(Oral):

This order shall dispose of EFA(OS)15/2003 and Review Application No. 440/2006. While EFA(OS)15/2003 arises out of an interim order passed by a learned Single Judge of this Court in execution proceedings arising out of a compromise decree passed in Suit No.1550/1997, Review Application no. 440/2006 is directed against an interim order passed by a Division bench of this Court in the present appeal. The controversy arises in the following factual backdrop:

2. Civil suit no. 1550/1997 for recovery of a sum of Rs.20,61,416.25/- on the basis of two dishonored cheques issued by the defendant-appellant in this appeal was filed by the plaintiff-respondent No.1, on the original side of this Court. A compromise

application under Order 23 Rule 1 & 3 read with Section 151 of CPC was filed in the said suit *inter alia* stating that the parties had entered into an amicable settlement between themselves providing for payment of a sum of Rs.11,82,500/- to the plaintiff in the suit in full and final settlement of the claim made in the same. The settlement also provided for delivery of possession of property bearing no. 7/18, Kalkaji Extension, New Delhi on the 2nd floor left hand side of the building. A decree passed in terms of the said settlement was eventually passed by R.C. Chopra, J, as his lordship then was, on 30th September, 2002, in the following words:

> *"This application under order 23 Rule 3 CPC been filed for passing a decree in terms of compromise. The application has been signed by all parties and is supported by their affidavits also. Court is satisfied that the compromise is voluntary in accordance with law. The compromise application market as Exhibit C-1. Accordingly a compromise is passed in terms of Exhibit C-1 which shall form of the decree.*
> *Decree sheet be prepared.*
> *The suit stands disposed of.*
> *IA No.8962/2002 also stands disposed of.*
> *IAs. No.6418-19/97, 8222/97 & 10454/1999*
> *Disposed of."*

3. We may also, at this stage, gainfully extract the critical part of the settlement between the parties relating to the payment of a sum of Rs.11,82,500/- to the plaintiff and the delivery of possession of the property mentioned above to the defendant. Para 3.1 of the joint application filed by the parties, in this regard, reads as under:

> *"3.1 The defendants shall pay a sum of Rs.11,82,500/- (Rupees eleven lacs eighty two thousand five hundred) to the plaintiff in full and final settlement of the reliefs claimed in the suit and consequently the plaintiff shall deliver the possession of the said immovable property being Second Floor left hand side of property no. 7/18, Kalkaji Extension, New Delhi, to the defendants."*

4. Despite the amicable settlement arrived at between them and the decree passed by the Court, the parties were it appears unable to resolve the matters regarding payment of the amount and delivery of possession, outside the Court necessitating institution of Executing proceedings of the decree mentioned above. In the said proceedings an order was passed by the Executing Court on 4th September, 2003 directing deposit by the judgment debtor of a sum of Rs.11,82,500/- in the Court and release of the said amount in favour of the plaintiff upon the plaintiff furnishing security to the satisfaction of the Registrar General of this Court within a period of two weeks. Since the order in question is brief, the same may be extracted in extenso for ready reference:

> ***"Ex. No. 262/2002***
>
> *Mr. Chetan Sharma, learned senior Advocate appearing for the decree holder states that a fresh cheque No. 137053 dated 3rd September, 2003 drawn on Bank of Pubjab, Chandigarh in the sum of Rs.11,82,500/- is ready with him and he is prepared to deposit the same in the Court in lieu of the earlier cheque which has lost its validity due to lapse of time. The cheque is ordered to be deposited in the Court.*
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> *Mr. Arun Batta, learned counsel for the*

judgment debtor prays that the amount be paid to be judgment debtor subject to his furnishing a security/surely subject to the outcome of the execution petition. The request is opposed by the counsel for the decree holder. Having regard to the facts and circumstances that the amount deposited by the decree holder is pursuant to a compromise/consent decree passed by this Court about three years back, it seems to be expedient that without prejudice to the pleas and contentions raised by the decree holder and the applicant/objector and subject to the judgment debtor furnishing a property security within two weeks to the satisfaction of the registrar General, the amount so deposited may be released in favour of the judgment debtor.

Ordered accordingly.

Mr. Arun Batta, learned counsel for the judgment debtor does not wish to file a reply to the execution petition or to the additional affidavit. Rejoinder, if, any, by the applicant – objector may be filed within two weeks.

List the matter on 17th October, 2003.

R.C. JAIN, J"

5. Aggrieved by the above order, the defendants-appellants have filed EFA(OS)15/2003 to argue that the payment of the amount of Rs.11,82,500/- was subject to the delivery of possession of the flat in question in their favour. It was contended by Messers Parekh and Shukla appearing for the appellants that while the appellants had no difficulty in depositing the amount payable under the decree in the Court, its release in favour of the plaintiff-respondent no.1 was wholly unjustified. It was contended by them that release of the amount

without Respondent No.1 surrendering the possession of the flat in their favour amounted to placing a premium on the illegal act of the respondent by allowing the respondent to continue holding the property illegally and also receive the amount which he would be entitled to receive only when he delivers the property to the appellants.

6. During the pendency of this appeal, a division bench of this Court had by an order dated 13th October, 2006 directed Sh. Rakesh Kumar Singh, respondent no.2, the party who is reported to be in actual physical possession of the flat in question, to deposit in this Court a sum of Rs.25,000/- per month towards mesne profits w.e.f. 23rd January, 2003. Aggrieved by the said direction, Sh. Rakesh Kumar Singh has filed Review Application no. 440/2006. Mr. Tiwary, counsel appearing on behalf of the review applicant argues that Sh. Rakesh Kumar Singh, Respondent no. 2 was not a tenant in occupation of the property. He submits that Sh. Rakesh Kumar Singh was let in possession of the property in question by plaintiff-respondent no.1 in the suit acting through Smt. Deepa Dhingra, its Managing Director. He further submits that while Respondent No.2 was in occupation of the property, he had negotiated a sale in his favour from Appellant No.1 company. In support of that submission, Mr. Tiwary placed reliance upon an agreement dated 21st January, 2003 allegedly executed between the appellant no.1 company and Ambuja Hotels and Real Estates Pvt. Ltd. through Sh. Rakesh Kumar Singh, its Director. He argued that since the flat in question was in possession of Ambuja Hotels and Real Estates Pvt. Ltd. in its own right on the basis of the agreement to sell executed in his favour by the appellant company, there was no justification for directing the company or respondent No.2, its Director to deposit mesne profits of

Rs.25,000/- per month. The order of this Court dated 13th October, 2006, argued the learned counsel, suffered from errors apparent on the face of the record, hence deserved to be set aside.

7. According to Messrs Parikh and Shukla, a document purporting to be an agreement to sell had, no doubt, been executed by appellant No.1 company but the transaction had fallen through on account of the fact that cheques for Rs.40 lacs given by the respondent no.2, Ambuja Hotels and Real Estates Pvt. Ltd. had been dishonored. It was contended by M/s Parekh and Shukla that since the R-2 and his company M/s Ambuja Hotels and Real Estates Pvt. Ltd. had cheated Appellant No.1 company, there was no question of the said agreement to sell coming to the rescue of R-2 or his company in order to legitimize its possession over the flat in question.

8. Mr. Tiwary, on the other hand, argued by reference to the document executed between the parties that the same acknowledges receipt of a sum of Rs.5 lacs in cash while another sum of Rs.10 lacs was paid by cheque dated 21st January, 2003 favouring M/s Aggarwal Law Associates and a sum of Rs.11,82,500/- was deposited payable to M/s Mauve & Crimson Advertising. Towards the sale price a sum of Rs.13,18,000/- alone was payable for which a cheque was issued to the appellant No.1 company in full and final settlement of the entire claim towards the sale consideration for the proposed sale transaction. Since Mr. Rakesh Kumar Singh had in the meantime got reliable information from one Sh. C.V. Shah that the property no longer belonged to appellant no.1 company, the payment of that cheque was stopped. There was according to Mr. Tiwary, no deliberate stoppage or dis-honoring of the cheque issued towards sale consideration as alleged by the appellants. It is noteworthy that Sh. C.V. Shah from whom respondent No.-2 claims to have received the

information regarding the appellant company having no saleable interest left in the property, has himself filed OS No. 1329/2003 in this Court in which an interim order dated 7th July, 2003 passed by a Single Judge of this Court has restrained the defendants in the said suit including respondent No.-2, Ambuja Hotels and Real Estates Pvt. Ltd. as also the appellants from transferring the possession of the property or creating any third party interest in the same. The interim order reads as under:

> *"Accordingly, by an ad-interim injunction, I restrain defendant No.4 from parting with possession or creating any third party interest in respect of flat on second floor, admeasuring 1800 sp. ft. of super area on plot No.7/18, Kalkaji Extension, New Delhi. Defendant Nos. 2,3, and 5 are also restrained from creating any third party interest in respect of flat on second floor, admeasuring 1800 sp. ft. of super area on plot No.7/18, Kalkaji Extension, New Delhi.*
>
> *Provisions of Order XXXIX Rule 3 CPC be complied with within three days.*
>
> Sd/-
> Manmohan Sarin,J"

9. The interim order passed by this Court on 13th October, 2006 has been complied with by respondent no. 2 in part. The said respondent has, pursuant to the directions issued by this court on 20th December, 2006 in the review application, deposited 50% of the amount in terms of the direction of this Court. The said amount is lying in deposit.

10. Having given our careful consideration to the submissions made at the bar and having perused the record, we are of the considered

opinion that the controversy lies in a narrow compass. The issue that arises in the appeal preferred before us is whether the direction issued by the Executing Court for deposit of a sum of Rs.11,82,500/- by appellant no.1 and its release in favour of respondent no.1 in this appeal was justified having regard to the fact that the said amount was to be paid in lieu of delivery of possession of the flat in question in favour of appellant no.1 company. The grievance of the appellants as noticed earlier is that while the appellant company is ready and willing to make the deposit, the amount so deposited should not have been directed to be released in favour of the respondent no.1 till such time possession of the flat was not delivered to the appellants in terms of para 3.1 of the settlement extracted earlier. There is, in our opinion, merit in that contention. On a plain reading of para 3.1 of the settlement between the parties, payment of Rs.11,82,500/- to the plaintiff in the suit was to be simultaneously effected by delivery of possession of the property in possession of the plaintiff. It is true that the Court could have directed deposit of the amount before issuing a warrant for recovery of possession and simultaneous release of the amount upon delivery of premises by the plaintiff but that is not what the court has done. There is no direction in the impugned order for simultaneous recovery of possession from respondent no.1. All that the order directs, is deposit of the amount and its release subject to the respondent no. 1 furnishing security. That direction, in our opinion, is likely to result in an inequitable situation inasmuch as the appellants company would neither get the possession of the property nor retain dominion over the money. The proper course, in our opinion, was to direct deposit of the money but withhold disbursement till such time the possession of the flat was not voluntarily handed over to appellant no.1 or delivered under the coercive process of the

Court. To that extent alone, we find there is room for our interference with the impugned order. Respondent No.-1 has not, it is noteworthy, appeared to contest this appeal which implies that she has no objection to the modification of the order nor is she interested in having the direction regarding disbursement enforced against the appellants.

11. That leaves us with the question whether the claim made by respondent No.-2 whether individually or on behalf of his company M/s Ambuja Hotels and Real Estates Pvt. Ltd. needs to be investigated in these proceedings. The admitted position, as noticed earlier, is that respondent No.-2 is in occupation of the flat in question as the Director of the company mentioned above. That company claims to be holding the property in its own right based on an independent agreement to sell entered into between appellant no. 1 and M/s Ambuja Hotels and Real Estates Pvt. Ltd. As to whether the agreement is valid in the eye of law, has been properly executed and is enforceable and if so whether execution of the decree can be obstructed on the basis of that agreement are matters which do not directly fall for our consideration in these appeals. All those issues can and, in our opinion, ought to be agitated before the Executing Court in proper proceedings. In that view, the direction regarding payment of Rs.25,000/- per month towards mesne profits also requires to be modified to the extent that while the amount deposited by respondent No.-2 would remain available to the Executing Court for proper adjudication and adjustment of equities in the ultimate analysis, the deposit of the balance amount in terms of the said direction would stand waived and the order to that extent modified.

12. Insofar as the claim made by Sh. C.V. Shah is concerned, since the matter is pending before a Single Judge of this Court on the

original side, the issues raised in the suit can and ought to be suitably agitated and determined in the same.

13. In the result, we allow EFA(OS) 15/2003 and R.A. 440/2006 but only in part and to the following extent:

(a) Order dated 4th September, 2003 shall stand modified to the extent that while appellant no.1 company shall deposit a sum of Rs.11,82,500/- with the Executing Court in terms of the direction already given, the said amount shall not be disbursed to plaintiff respondent no.1 till such time the possession of the flat is not delivered to the appellant company in terms of the compromise decree passed by the Court. The appellant shall be free, in this regard, to approach the Executing Court for a proper direction for delivery of possession in which event respondent no.2 i.e. Ambuja Hotels and Real Estates Pvt. Ltd. shall be free to object to the execution of the decree on all such grounds as are legally available to it including the ground that there is an agreement to sell executed between appellant no.1 company and M/s Ambuja Hotels and Real Estates Pvt. Ltd. Needless to say that if any such objections are filed, the Executing Court shall examine the same in accordance with law and pass appropriate orders on the same.

(b) Orders dated 13th October, 2006 shall stand modified with the direction that the amount of Rs.5,87,500/- deposited by respondent no.2 in this Court shall stand transferred to the Executing Court for appropriate orders regarding the same upon adjudication of the issues that arise for consideration. Further deposit in terms of the said order

shall stand waived.

(c) It shall also be open to the parties to seek any further direction from the Executing Court regarding mesne profits if otherwise legally permissible.

14. No costs.

T.S. THAKUR,J

KAILASH GAMBHIR, J

NOVEMBER 23, 2007
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